IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9903 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAFAJI DHAMAJI THAKOR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR PK SHUKLA, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 21/12/2000

ORAL JUDGEMENT

1. Learned AGP Mr. P.K. Shukla tendered on record the affidavit-in-reply filed by respondent No.1, Police Commissioner, Ahmedabad City, which is taken on record.

2. Petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Ahmedabad City on 14th August, 2000 in exercise of powers conferred upon him under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) and the petitioner came to be detained from 14th August, 2000 in pursuance of the above said order.

3. The detaining Authority considered the 7 crimes registered against the petitioner under the Bombay Prohibition Act. The detaining authority has also placed reliance on the investigation carried on in the above said crimes and complaints filed. The detaining authority took into consideration the statements of two witnesses who on assurance of anonymity offered their statements to the concerned authority to the extent that the petitioner was dealing in selling of illegal liquor and was hardened criminal and headstrong person. As per the statements of the witnesses, on suspicion that the concerned witnesses are giving information to the police about the illegal activities of the petitioner, they were beaten by the petitioner, which obstructed to public peace. From the above materials, the detaining authority came to the conclusion that the petitioner was dealing in illegal liquor which was harmful to public health and the petitioner was obstruction to public peace. The detaining authority therefore declared the petitioner as a " bootlegger " within the meaning of Section 2(b) of the PASA Act. Therefore, the impugned order was passed against the petitioner.

4. Learned Advocate Ms. D.R. Kachhavah for the petitioner and learned AGP Mr.P.K. Shukla for the respondents were heard.

5. Amongst various grounds advanced against the order of detention, it was vehemently urged that the order of detention is vitiated by non-application of mind by the detaining authority in passing the order of detention. It was urged that except the last two crimes registered against the petitioner, the petitioner was on bail. It was urged that the remedy of cancellation of bail was available to the detaining authority but the same has not been resorted to.

6. Considering the rival contention it appears that the case of the petitioner is squarely covered by the Bench decision of this Court in the case of ZUBEDABIBI RASIDKHAN PATHAN vs.STATE OF GUJARAT, reported in 1995(2)

GLR 1134 and again in LPA No. 1056 of 1999, in the case of YUNUSBHAI HASANBHAI CHANCHI vs. DISTRICT MAGISTRATE, decided on 15th of September, 1999. By Bench decision, this court ruled that the powers under Section 437(5) of the Cr.P.C. were far more wide in import and intent. The detaining authority failed to consider the said provision in both the above cases, the order of detention came to be quashed on this ground alone because the detaining authority failed to consider the less drastic remedy available to the detaining authority as to the cancellation of bail. This was considered to be non-application of mind by the detaining authority to the relevant aspects of the case. In the present case also the detaining authority stated that out of 7 crimes, the petitioner was released on bail in 5 crimes while in last two crimes registered on 2nd and 10th of August, 2000, the petitioner was in judicial custody. The detaining authority in this respect observed that in the remaining two crimes in which the petitioner was in judicial custody, the petitioner was likely to file bail application at any time before the competent court and was likely to be released on bail. It is observed by the detaining authority that after releasing the petitioner on bail, there was a possibility that the petitioner was likely to indulge in illegal activities of selling of liquor. The detaining authority further observed that the cancellation of bail under Sec. 437(5) of the Cr.P.C. was considered, but the procedure was likely to consume more time and since the activities of the petitioner was required to be prevented forthwith, the same was not considered a fit remedy to be resorted to by the detaining authority. The total non-application of mind on the part of the detaining authority is obvious qua this aspect of the case. The detaining authority also failed to consider the important aspect that the petitioner was in judicial custody and was not capable of continuing his illegal activities. The detaining authority through the prosecution could have opposed the bail of the petitioner if at all preferred by the petitioner before the competent court on the same ground which are mentioned in the detention order. Instead, the detaining authority has simply concluded that the petitioner was likely to be released on bail on preferring bail applications. This is the total non-application of mind by the detaining authority. Secondly, without resorting to the provision of Sec. 437(5) of the Cr.P.C., the detaining authority has simply brushed aside this less drastic remedy by merely saying that the process was likely to consume more time. The total non-application of mind qua this aspect also is apparent on the part of the detaining authority.

Therefore, the order of detention, for the above said two reasons, is required to be quashed and set aside.

7. In the result, this petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 14th August , 2000 against the petitioner under the PASA Act is a hereby ordered to be quashed and set aside. Petitioner - Mafaji Dhamaji Thakor is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair